Supreme Court, U.S.
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No. 02-

IN THE
Supreme Court of the United States

WORLD CHURCH OF THE CREATOR,

Petitioner,

v.

TE-TA-MA TRUTH FOUNDATION—FAMILY OF URI, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1) Whether the Lanham Act may be constitutionally applied to churches in a way that hampers or eliminates their First Amendment guarantees of freedom of speech and free exercise of religion by prohibiting the use of religious terms that have been trademarked by another.

2) Whether the Court of Appeals erred in finding that "Church of the Creator" is a non-generic phrase.

3) Whether the Lanham Act was designed or intended to apply to noncommercial and nonprofit religious entities.

4) Whether the Court of Appeals erred and violated Petitioner's Fifth Amendment Due Process of Law rights in ordering judgment for the Respondent on its allegation of trademark infringement without there ever being a factual determination as to whether there was a likelihood of confusion over dual use of the name "Church of the Creator".

5) Whether the Court of Appeals erred and violated Petitioner's Fifth Amendment Due Process of Law rights by ordering judgment for the Respondent without a factual resolution of Petitioner's prior use defense.

6) Whether the Court of Appeals denied Petitioner a fair hearing, violating Petitioner's Fifth Amendment Due Process rights, due to its denunciation of Petitioner's religious beliefs and erroneous conception of the facts and law of this case.

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OPINIONS BELOW

The decision of the Court of Appeals is reported at 297 F. 3d 662 (7th Cir. 2002) (App. *infra*). The decision of the District Court is reported at 2002 U.S. Dist. LEXIS 1478 (N.D. Ill. Jan. 31, 2002) (App. *infra*).

STATEMENT OF JURISDICTION

The Court of Appeals entered its decision on July 25, 2002 and denied Petitioner's Motion for Rehearing on August 19, 2002. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

Unbeknownst to Petitioner World Church of the Creator ("Church"), Respondent walked into the trademark office in 1987 and proceeded to apply for a registered trademark on the name "Church of the Creator" even though the Church was already using the name at the time and had in fact been using the name for the previous fourteen years. In 1988, once again unbeknownst to the Church, Respondent was granted the trademark. In 2000, Respondent sued the Church alleging federal trademark infringement, unfair competition, and respective ancillary state law claims. The Church defended on numerous grounds including the genericness of the name, that it had prior use of the name, that no authenticated, non-hearsay evidence of confusion by the public concerning the dual use of the name exists, and that trademark law cannot constitutionally operate as an infringement upon First Amendment freedom of speech and free exercise of religious rights.

The District Court granted the Church's motion for summary judgment on its defense of genericness on January 31, 2002, though opting not to review the Church's other defenses. A panel of the 7th Circuit Court of Appeals ("Panel") reversed on July 25, 2002, not only finding that the name "Church of the Creator" is descriptive rather than generic but also ordering the District Court to award judgment in favor of Respondent without a factual resolution of the Church's numerous other defenses. The Church accordingly petitioned the Court of Appeals for rehearing with suggested hearing *en banc*. The Court of Appeals declined to rehear the case on August 19, 2002.

Illustrative of the dangers to Constitutional freedoms presented by the instant lawsuit, Respondent is at the time of this writing requesting that the District Court order the destruction of all of the Church's religious materials—*including its Bibles*—bearing the name that once again, it, *the Petitioner, had and used before Respondent*. Trademark law is therefore being used simply as a convenient tool in order to eliminate the First Amendment rights of the Church and trademark terms of religious significance out of public use in violation of the First Amendment. What Respondent could not do directly—essentially *ban* the Church from distributing the Bibles of its religion (called *Creativity*)—it seeks to do through an unconstitutional harnessing of the federal judiciary for that purpose.

A. The First Amendment forbids the Federal government from forcing a church to discontinue using a name or phrase that has religious significance.

The Church was founded in 1973. It is not a Christian church and takes no inspiration for its religious teachings from the mainstream religions whatever. Instead, as set forth by its Founder Ben Klassen in *Nature's Eternal Religion*—the Bible that both founded the church and the religion it practices, Ben Klassen stated:

> The principles and creed set forth in this book constitute the Articles of Faith of the Church of the Creator.
>
> Members of our religion are called Creators, whether men, women or children, and the religion itself is known as Creativity.
>
> We are herewith founding a new religion for the White Race. We are calling the new religion **Creativity**. Our Church is called **The Church of the Creator**. Members of our religion are called **Creators**.

(Bold type in the original). Excerpts from *Nature's Eternal Religion*, copyrighted in 1973.

It is thus an integral part of the Church's religion that it use the phrase "Church of the Creator". Unlike the Christian religion where no particular name is mandated by its founder Jesus Christ, in the case of the Church, its founder Ben Klassen mandated the name "Church of the Creator" and this name thus has religious significance.

It is settled that Creativity is a religion under Federal law. *Peterson v. Wilmur Communications, Inc.*, 205 F. Supp. 2d 1014, 1021 (E.D. Wis. 2002). It cannot be forced to forsake elements of its Faith guaranteed protection by the First Amendment in deference to misplaced application of trademark law.

B. "Church of the Creator" is generic as a matter of law.

The Panel erred by looking only to whether the name "Church of the Creator" is commonly used as the name for monotheistic religion or as a genus of religion. Neither the case law nor the Lanham Act, however, require or allow such a restricted inquiry. The reality is that *all churches* are "churches of the creator" regardless of the nature of "the Creator" that the particular church follows. Therefore, "Church of the Creator" is generic, and even more so than "Church of God" which at least indicates belief in a supernatural. Further, if "Church of God" is generic—a position that would be difficult to argue otherwise—simple logic dictates that so is "Church of the Creator". However, the Panel didn't even attempt to address this basic and obvious fact.

Whether the Church is monotheistic or nontheistic is completely irrelevant. Nor does "Church of the Creator" need to be commonly used as the generic name for all churches as the Panel seemed to indicate. It only need be, as the District Court noted, "generic for a subcategory of churches, namely those that consist of a building for worship of, or a body of believers in, a creator-entity." District Court Memorandum Opinion and Order, p. 25). (App. *infra*).

C. The Lanham Act was never designed or intended to apply to noncommercial and nonprofit religious entities.

"The purpose of trademark law is to ensure that *consumers* are able to rely on marks in expressing their preferences by prohibiting *competitors* from using marks in a way that confuses *consumers* about the source of a *product or service*." Barrett, *Intellectual Property* at 76 (emphases added). "A trademark is a word, name, symbol, device, or any combination thereof, which is used to distinguish the ***goods*** of one person from goods manufactured or sold by others, and to indicate the source of the goods, even if the source is unknown." *Barrett* at 77 (emphasis in original).

> A trademark is, of course, a form of business property. But the "property right" or protection accorded a trademark owner *can only be understood in the context of trademark law and its purposes*. A trademark owner has a property right only insofar as is necessary to prevent consumer confusion as to who produced the *goods* and to facilitate differentiation of the trademark owner's *goods*.

Urantia Foundation v. Maaherra, 895 F. Supp. 1338, 1346 (D. Ariz., 1995) (emphases added). "[*T*]*rademark is not property in the ordinary sense* but only a word or symbol indicating the origin of a *commercial* product." *L.L. Bean, Inc. v. Drake Publishers, Inc.*, 811 F.2d 26, 29 (1st Cir. 1987) (first emphasis in the original, second added), *citing Power Test Petroleum Distributors v. Calcu Gas, Inc.*, 754 F.2d 91, 97 (2d Cir. 1985), *quoting Industrial Rayon Corp. v. Dutchess Underwear Corp*, 92 F.2d 33, 35 (2d Cir. 1937), *cert. denied*, 303 U.S. 640, 58 S. Ct. 610, 82 L. Ed. 1100 (1938).

> The right of the plaintiff must be based upon a wrong which the defendant has done to it by misleading customers as *to the origin of the goods sold* thus taking away from its *trade*. Such a right is not founded on a bare title to a word or symbol but on a cause of action to prevent deception.

Dresser Industries, Inc. v. Heraeus Engelhard Vacuum, Inc., 395 F.2d 457, 461 (3d Cir. 1968) (emphases added).

The purpose of trademark is therefore fundamentally *business*-related and is designed to protect *business* interests. Names are allowed to be appropriated so that consumers can with confidence do business with the people they had intended. The purpose of churches, however, is altogether different. They are bodies of people who wish to spread religious *beliefs*. People who may wish to acquaint themselves with the religious teachings of one church or another are not "consumers" within the purpose of trademark law and nor are the churches "competitors." Here especially, in which both sides and the two courts that have heard this case agree that the beliefs of the respective churches are completely contrary to one another, they are not "competitors" by which the Lanham Act and trademark law in general were meant to regulate. Further, the fact that there are many thousands of churches in the United States—many with same or similar names—makes the application of trademark laws to churches suspect and, indeed, foolish. No one "confuses" the identity of a church on one block with that on the next block even if their names may be similar. Trademark cases involving churches are scant accordingly. This is because it is understood that there are multiple names that churches can and will use to communicate their message and that doing so does not

invoke any pecuniary interests whatever. There simply is no wrong to Respondent in this case that trademark law was designed to rectify.

The Church is simply a body of believers in the religion of Creativity. It is not a business. Using trademark law to strip the Church of its name and compel its adherents to cease referring to that body as a "Church of the Creator" is a perversion of trademark law that the Supreme Court of the United States should now reject. The Lanham Act was instituted to protect *commercial* interests—not as a means to restrict the free religious exercise and freedom of speech rights of churches. Those First Amendment rights cannot be abridged through the application of the trademark statute.

D. The Panel violated the Church's Fifth Amendment Due Process of Law rights by ordering judgment for Respondent on its claim of trademark infringement without there ever being a factual determination as to whether there was a likelihood of confusion over dual use of the name "Church of the Creator".

Throughout these proceedings, Respondent has failed to produce one piece of authenticated, non-hearsay evidence of "confusion" on the part of the public concerning dual use of the name "Church of the Creator" and the Church has thus disputed Respondent's claim of confusion throughout the litigation. Nevertheless, the Court of Appeals—without any evidentiary basis—held that the names World Church of the Creator and Church of the Creator are "confusingly similar." However, whether the names are confusingly similar *is a question of fact*, and since the District Court ruled in the Church's favor on summary judgment, no factual determinations were made in this case that the Panel could properly review.

Confusion is an issue of fact rather than law. *Johnson v. Revenue Management Corp.*, 169 F.3d 1057, 1060 (7th Cir. 1999), *citing Reed-Union Corp. v. Turtle Wax, Inc.*, 77 F.3d 909, 912 (7th Cir. 1996) and *Scandia Down Corp. v. Euroquilt, Inc.*, 772 F.2d 1423, 1428 (7th Cir. 1985). Whether or not anyone was confused is a disputed issue of fact and disputed issues of fact are resolved *at trial. J.B. Williams Co., Inc. v. Le Conte Cosmetics, Inc.*, 523 F.2d 187, 191 (9th Cir. 1975) (emphasis added).

The Panel therefore erred in awarding judgment to Respondent without there first being a factual determination by a jury as to whether there is truly a likelihood of confusion in this case. Instead of awarding judgment to Respondent, the Court of Appeals should have remanded the case back to the District Court for a jury determination on this issue. Its failure to do so violated the Church's Fifth Amendment Due Process rights.

E. The Court of Appeals violated the Church's Fifth Amendment Due Process of Law rights by ordering judgment for Respondent on its claim of trademark infringement without there ever being a factual resolution of the Church's prior use defense.

Contrary to the claim of the Panel, the Church *did* assert prior use of the name "Church of the Creator" as a defense throughout the proceedings and named witnesses slated to testify that the Church is the same church founded by Ben Klassen in 1973. In any event, the Panel then went on to hold that the cessation of the Church's corporate status ("reorganization", as the Panel called it) rendered it no longer the same entity for purposes of the prior use defense. Not only is there no case law for this proposition (a position

that defies common sense since a "reorganization", after all, implies the same organization) but as with the issue of confusion, whether or not the Church is the same church founded by Ben Klassen is a *question of fact* rather than a question of law. Such issues of fact are properly resolved at trial rather than by the Court of Appeals (*see again J.B. Williams Co., v. Le Conte Cosmetics, Inc.*, 523 F.2d 187, 191 (9th Cir. 1975)). At most, then, the Panel should have remanded the case to the District Court for a factual resolution of the issue. Its failure to do so thus violated the Church's Due Process rights by summarily ordering judgment be imposed against it without the Church having the opportunity to be heard and being able to present its case that it used the name first.

The Panel itself on page 2 of its Decision stated that "The World Church of the Creator's beliefs are explicated more fully in *Nature's Eternal Religion*, a book by *its founder*, Ben Klassen . . ." (emphasis added). This begs the question: how can the Church not be the same church founded by Ben Klassen (and therefore entitled to the prior use defense) if Ben Klassen founded it?

F. The Panel denied the Church a fair hearing, violating Petitioner's Fifth Amendment Due Process rights, by virtue of its denunciation of Petitioner's religious beliefs and distorted conception of the facts of this case.

Throughout the Panel's Decision, it used language and made assertions that reveal prejudice against the Church in this case. From the beginning until the end, the Panel makes clear that it views the religious beliefs of Respondent with favor and those of the Church with disfavor. This partiality

deprived the Church of a fair hearing based on the *evidence* of this case. While reading the Court of Appeals' Decision in its totality is the best way to show its prejudice, the Church wishes to note the following salient points.

First, the Panel stated that the Church "calls for the elimination" of other races. Such an allegation—with its inference that the Church advocates murder of other races—is unsubstantiated by the record of this case and clearly reveals prejudice against the Church by the Panel. The Church has never advocated the "elimination" of other races and this false allegation seems to only serve to justify to the public the deprivation of a controversial church's name.

Second, the Panel's contention that the Church "had its charitable status revoked by both state and federal governments" is equally false, seems to have been pulled from out of thin air in an effort to further demonize it, and is manifestly irrelevant to what was supposed to be a case having to do with trademark law.

Third, the Panel's claim that the Church added "World" to its name as part of a "judgment proofing strategy" in order to avoid paying damages for a "murder" further casts severe doubt on its partiality. The fact of the matter is that the Church *never had a "judgment proofing strategy" and nor did the Church ever orchestrate a "murder" as the Panel claims*. There is nothing in the record that would give the Panel valid cause to assert such specious claims. In any case, while such claims could perhaps be considered relevant in some other proceeding, once again, *they are obviously not relevant here in what is supposed to be a trademark case*. However, they do show that the Panel was prejudiced against the Church and ruled against it based on that prejudice.

As this Court has stated:

> The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases. This requirement of neutrality in adjudicative proceedings safeguards the two central concerns of procedural due process, the prevention of unjustified or mistaken deprivations and the promotion of participation and dialogue by affected individuals in the decisionmaking process. The neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts or the law. At the same time, it preserves both the appearance and reality of fairness, "generating the feeling, so important to a popular government, that justice has been done.

Marshall v. Jerrico, Inc., 446 U.S. 238, 100 S. Ct. 1610 (1980), *citing Carey v. Piphus*, 435 U.S. 247, 259-262, 266-267, 98 S. Ct. 1042, 1043, 1050-1052, 1053, 1054 (1978); *Mathews v. Eldridge*, 424 U.S. 319, 344, 96 S. Ct. 893, 907 (1976); and *quoting Joint Anti-Fascist Committee v. McGrath*, 341 U.S. 123, 172, 71 S. Ct. 624, 629 (1951) (Frankfurter, J., concurring).

This case is directly on point and illustrates perfectly what has happened here. The statements made by the Panel show that its prejudice and "erroneous or distorted conception of the facts or the law" motivated it to strip the Church of the name it has used and held for over twenty-nine years and which is part of its religious beliefs. Any objective reading of its decision shows that neither the appearance nor reality of fairness was preserved as required under *Marshall, supra*.

REASONS FOR GRANTING THE PETITION

Without a hearing from this Court, in violation of the First Amendment, the Church will be forced by the federal government to expunge use of a phrase that is a key part of its religious beliefs. It will further potentially be forced to turn over its religious texts for destruction. Its adherents will be faced with a *fait accompli*—either cease the practice of its religious beliefs (including the distribution of its religious texts bearing the religious phrase "Church of the Creator") or risk being fined or jailed for contempt. In summary, a religion faces government-endorsed destruction because of Respondent's quest to trademark a phrase that is part and parcel of the Church's religious faith.

Trademark law, however, was never meant to apply to non-commercial religious entities, and as a matter of simple common sense, no one has a right to trademark "Church of the Creator" any more than they have a right to trademark a "Church of God", "Church of Christ", or any other obviously generic names that have nothing to do with the purpose of trademark law even if they weren't generic. Simply put, without a hearing by this Court, Respondent will have succeeded in trademarking the "Creator" out of existence for anyone who would have desired to call upon Him or it. Fundamental religious liberties protected by the Constitution —the highest law of the land—will instead be subsumed by a statute that was never meant to limit the exercise of religious rights in the first place.

The Church's main Bible, *Nature's Eternal Religion*, was published and copyrighted in 1973—fifteen years before Respondent secured a trademark on a name by which the Church was founded. Throughout *Nature's Eternal Religion*

as well as its other Bibles, the name "Church of the Creator" appears and yet now, suddenly, almost thirty years later, a panel of the 7th Circuit Court of Appeals has declared the name "verboten" and Respondent has seen fit as a consequence to call for the destruction of those Bibles.

The usual "run of the mill" trademark case arguably presents issues of little public concern. However, this case is vastly different, for this case is really not about trademark law at all but instead about the use of trademark law as a means of circumventing the First Amendment. The very ability of churches to exist and express their religious beliefs without interference or penalty by the federal government is at stake. If today it is the World Church of the Creator and its adherents who are told that they must discontinue expressing their religious beliefs through the words "Church of the Creator" and dutifully turn over their religious books for destruction, tomorrow it may be any other church that is similarly forced to forsake its religious beliefs because of similar misplaced submission to trademark law. If a phrase from the Church's Bible *Nature's Eternal Religion* can be constitutionally excised, then so can a phrase from the Christian Bible, Muslim Koran, or Jewish Talmud.

The question of whether religious books can be ordered to be destroyed and whether religious speech can in general be restricted by virtue of trademark law is a question of first impression for this Court that deserves hearing. The fundamental question presented to the Court is whether a phrase having religious significance can constitutionally be appropriated by one church to the exclusion of another. This question deserves thoughtful resolution not only for the sake of the World Church of the Creator's religious liberties, but also for churches and religious adherents in general.

A. Any judgment ordering a church to change the name mandated by the founder of its religion violates the First Amendment.

The First Amendment bars Respondent's claims against the Church because 1) the Church's religious beliefs mandate that it use the name "Church of the Creator" and 2) the Panel's decision clearly infringes upon the Church's free exercise of religious rights by preventing the Church from continuing to disseminate its Bibles and otherwise express its belief that it is a Church of the Creator.

Since the name "Church of the Creator" is part of the religious teachings of the Church, its usage by the Church is protected by the Free Exercise clause of the First Amendment. Trademark rights are property rights. However, it is the contention of the Church that there is no property right in a name that has religious significance. Otherwise, religious ideas could be routinely trademarked out of public usage and the First Amendment would become meaningless.

By means of analogy, if Jesus Christ had said in the New Testament, "You shall call my church 'Church of Jesus Christ'", any group of people forming a Christian church would have the Free Exercise Right to indeed call their church by that name regardless of whether someone else had obtained a trademark on it. It is the same situation with the Church. The Lanham Act was instituted to protect *commercial* interests—not as a means to restrict the free religious exercise and freedom of speech rights of churches.

Further, since it is part of the religious Creed practiced by the Church to consider the White Race the "Creator", forcing the Church to cease referring to itself as the "Church

of the Creator" would violate the Freedom of Speech Clause. Holding that the Church may not refer to itself this way would be an unnecessary and unconstitutional restraint on the means by which the Church may characterize itself and represent itself. The Church is indeed a church and it is "of the creator".

"The First Amendment prohibits not only statutory abridgement but also judicial action that restrains free speech." *CPC Intern., Inc. v. Skippy Inc.*, 214 F.3d 456, 461 (4th Cir. 2000) citing *New Orleans Steamship Ass'n v. General Longshore Workers*, 626 F.2d 455, 462 (5th Cir. 1980). The banning of the words "Church of the Creator" from communications in disregard of the religious nature of those communications thus falls afoul of the First Amendment.

Under the traditional *Lemon* analysis, a statute or practice which touches upon religion, if it is to be permissible under the establishment clause, must have secular purpose; it must neither advance nor inhibit religion in principal or primary effect; and it must not foster excessive entanglement with religion. *Lemon v. Kurtzman*, 403 U.S. 602, 612-613, 91 S. Ct. 2105, 29 L. Ed. 2d 745 (1971). The remedies prayed for by Respondent fall afoul of both the second and (especially) third prong of *Lemon*. First, ordering the Church to desist from using its name—a name that is completely interwoven through its religious doctrine—would clearly have the effect of inhibiting the free exercise of the Church's religious beliefs. Second, such a order would foster an excessive entanglement with the Church's religion in that the federal judiciary would be called upon to scrutinize sermons, religious texts, etc. in order to enforce it.

The Free Exercise Clause of the First Amendment provides that "Congress shall make no law . . . prohibiting the free exercise . . . of [religion]." U.S. Const. Amend I.

> This Clause has a double aspect. On the one hand, it forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship. Freedom of conscience and freedom to adhere to such religious organization or form of worship as the individual may choose cannot be restricted by law. On the other hand, it safeguards the free exercise of the chosen form of religion. Thus the Amendment embraces two concepts,—freedom to believe and freedom to act.

Altman v. Bedford Cent. School Dist., 245 F.3d 49 (2d Cir. 2001). Forcing the Church to discontinue using its name would thus violate the Church and its adherents' right to freely practice their religion. The government simply cannot restrict this exercise and in addition, the government has no interest at all in allowing one church to use the name "Church of the Creator" to the exclusion of another. As made clear by the case law, where there is no indication that the restriction of an entity's religious activities was the actual objective of the government but only that there has been a restrictive effect, it must be decided "whether government has placed a substantial burden on the observation of a central religious belief or practice and, if so, whether a compelling governmental interest justifies the burden." *Altman*, at 79, citing *Jimmy Swaggart Ministries v. Board of Equalization*, 493 U.S. 378, 384-85, 110 S. Ct. 688, 107 L. Ed. 2d 796 (1990) (quoting *Hernandez v. Commissioner*, 490 U.S. 680, 699, 109 S. Ct. 2136, 104 L. Ed. 2d 766 (1989)); and *Wisconsin v. Yoder*, 406 U.S. 205, 220-221, 92 S. Ct. 1526, 32 L. Ed. 2d 15 (1972).

What the Panel failed to appreciate or understand is that its status as a "Church of the Creator" is indeed a central religious belief of the Church and that ordering the Church and its adherents to cease expressing that belief places a substantial burden on its observation of that belief. That this is the case is starkly revealed by the fact that the Church faces confiscation of its Bibles and a court order prohibiting any and all references to itself as a "Church of the Creator". However, "Church of the Creator" is not a "denomination" name changeable at will as the Panel seemed to indicate. It instead connotes the deep-seated belief of its adherents that it is indeed a church of the Creator—i.e., the White Race. Whatever ideological disagreement the Panel had with the Church's religious beliefs should have had no bearing on its decision. Instead, the text of its decision clearly shows that it did.

There is no compelling interest on the part of the government in picking and choosing which church can or cannot use the name "Church of the Creator." However, this is the only way in which this Court could possibly constitutionally force the Church to change its name. In *Yoder*, for example, this Court ruled that the right of the Amish to freely practice their religion would be violated if their children were forced to attend school. It is clear that in that case, the government had *far more* of an interest (namely, its interest in universal compulsory education) than it does here in resolving whether the Church can, or cannot use the name "Church of the Creator". Put another way, the federal government in this case hardly has more interest in forcing the Church to change its name than the state of Wisconsin had an interest in forcing the Amish children to attend school. Not only is there not a "compelling" government interest in this case but there is in fact no interest

at all. Forcing the Church to change its name and essentially rewrite its religious texts would undeniably be a substantial burden on the religious practices of the Church and this burden is completely unjustified.

"[T]he First Amendment rests upon the premise that both religion and government can best work to achieve their lofty aims if each is left free from the other within its respective sphere." *McCollum v. Board of Education*, 333 U.S. 203, 212, 68 S. Ct. 461, 465, 92 L. Ed. 2d 649 (1948). In the words of Thomas Jefferson, "the clause against establishment of religion by law was intended to erect 'a wall of separation between Church and State.'" *Everson v. Board of Education*, 330 U.S. 1, 67 S. Ct. 504, 512 (1947), *citing Reynolds v. United States*, 98 U.S. 145, 25 L. Ed. 244 (1878). "The First Amendment has erected a wall between church and state. That wall must be kept high and impregnable." *Everson*, at 513.

Simply looking at this case at its most basic level, is it the government's business to be involved in the naming of churches or prohibiting the use of certain names? The answer is clearly "no". The public can easily distinguish between what church they wish to follow without the heavy hand of the federal government forcing churches to give up various names and extinguish various religious teachings from their creeds.

B. The errors of the Court of Appeals Panel violated the Church's Due Process rights.

As indicated earlier, the Panel made no secret of its distaste for the Church's religious beliefs and interjected numerous irrelevant and prejudicial issues into this case that

show a marked deviance from the standards set forth in *Marshall, supra*. It essentially contrived numerous facts and ignored others in order to arrive at a preconceived result: the forfeiture of a name which is part of the Church's religious beliefs and which it has used for almost thirty years. While the Church's First Amendment contentions present the more compelling reason for the Court to grant this Writ of Certiorari, the numerous factual and legal errors coupled with the Panel's prejudice have violated the Church's right to Due Process of law that deserves remedy by the only court left to provide it.

THIS ISSUE IS IMPORTANT BECAUSE OF THE SERIOUS DANGER TO THE FIRST AMENDMENT RIGHT OF FREEDOM OF SPEECH AND FREE EXERCISE OF RELIGION THAT THE APPLICATION OF TRADEMARK LAW TO RELIGIOUS CONCEPTS POSES

If "Church of the Creator' can be appropriated by one church to the exclusion of another even though the phrase constitutes a *fundamental part of a particular religious teaching*, there is the very real possibility that individuals will try to seize other religious phrases and proceed to sue churches using them just as what happened here. What is to stop, for example, an individual from seeking and potentially receiving a trademark on the phrase "John the Baptist" or "The Twelve Disciples" and then proceed to bring actions against those who use the phrases in various contexts? Are we going to start blackening out sections of The Holy Bible or gag the use of phrases within it? There needs to be—and in fact must be—a decision by this Court that religious teachings and their expression are not subject to the application of the Lanham Act. Only this Court can provide this broad guidance.

CONCLUSION

For these compelling reasons of constitutional importance, the Court should grant this Writ of Certiorari.

Respectfully submitted,

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